



BRADLEY M. CAMPBELL LLC
COUNSELORS AT LAW

April 26, 2012

By Registered Mail, Return Receipt Requested
And By Electronic Mail or Facsimile

U.S. Metals Refining Co.
300-400 Middlesex Avenue
Carteret, New Jersey 07008

Cypress Amax Minerals Co.
333 North Central Avenue
Phoenix, Arizona 85004

R.L. Buchanan, Jr., Ph.D.
Freeport McMoRan Copper & Gold, Inc.
333 North Central Avenue
Phoenix, Arizona 85004

Anthony Filiaci
Amax Realty Development
333 North Central Avenue
Phoenix, Arizona 85004

Keith E. Lynott
McCarter & English
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102-4056

Re: Notice of Intent to Sue under Section 7002(a)(1)(B) of The
Resource Conservation and Recovery Act, 42 U.S.C. § 6972(A)(1)(B):
USMR/Amax Site, Middlesex Avenue, Carteret, New Jersey

Dear Recipients:

Pursuant to section 7002(a)(1)(B) on the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6972(a)(1)(B), the Borough of Carteret and a class of residential property owners (collectively, Carteret or the Borough) hereby notify you of

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their intent to sue U.S. Metals Refining Company, Cypress Amax Minerals Co., Freeport McMoRan Copper & Gold, Inc., and Amax Realty Development Co. (collectively, USMR/Amax), for the abatement of an imminent and substantial endangerment to health and the environment resulting from the illegal disposal of waste from USMR/Amax refining operations on Middlesex Avenue in Carteret.

Between 1901 and 1986, USMR/Amax conducted metal refining operations at its property in Carteret that generated toxic emissions and resulted in disposal of heavy metals, chlorinated volatile organic compound, and other toxics. The history of unlawful emissions and disposal from the facility is aptly summarized by Judge Debevoise's opinion in *Reichhold v. U.S. Metals Refining Co.*, 655 F. Supp. 2d 400 (D.N.J. 2009). These hazardous wastes and hazardous substances were disposed of on public and private properties throughout the Borough, where they pose a continuing exposure threat to residents and a particular risk to children. Numerous privately sampled properties downwind of the USMR/Amax sites indicate lead contamination, among other toxics, at levels exceeding state and federal health-based standards for residential property.

While the USMR/Amax site has been under the supervision of the New Jersey Department of Environmental Protection (NJDEP) pursuant to an Administrative Consent Order (ACO) originally dated January 22, 1988, NJDEP failed for more than 20 years to require, and USMR failed for more than 20 years to perform, any investigation of off-site contamination. Only in late December 2011, did NJDEP indicate any intention to enforce requirements of the technical requirements for site remediation mandating investigation of off-site contamination; by its own admission, NJDEP did so only after being prompted to do so by an investigative series on abandoned smelter sites by the Gannett news organization. These failures, and more than two decades of leaving Carteret and its residents exposed to toxic hazards, make clear there is no basis to believe that state action will result in abatement of the imminent and substantial danger resulting from USMR/Amax's operations.

Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), allows affected persons to bring suit:

against any person . . . including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or is contributing to the past or present handling, storage, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

The Borough believes that hazardous waste generated and/or disposed of by USMR/Amax on public and private property and now migrating into adjacent water bodies presents an imminent and substantial endangerment to health and the environment. Nearly 25 years after NJDEP assumed oversight and nearly 25 years after USMR/Amax was to have begun the cleanup process, the State and USMR/Amax have failed to take the actions necessary to abate this ongoing and substantial endangerment.

April 26, 2012
USMR/Amax



Page 3
RCRA Notice Letter

The suit will be filed in the United States District Court for the District of New Jersey, and will seek abatement of the imminent and substantial endangerment caused by USMR/Amax. The Court will be asked, *inter alia*, to order USMR/Amax commence immediately with testing and remediation of contaminated properties in the vicinity of the USMR/Amax facility.

If you have any questions about this letter or wish to discuss its contents with us, please contact Bradley M. Campbell at the letterhead address and phone number. We request that if you wish to discuss this matter before the complaint is filed, you contact us as quickly as possible. We intend to file the complaint shortly after the expiration of the 90-day notice period provided by 42 U.S.C. § 6972(b)(2)(A) unless USMR/Amax acts promptly and adequately to abate the endangerment.

Very truly yours,

Bradley M. Campbell LLC

By: 
BRADLEY M. CAMPBELL

c: The Honorable Lisa P. Jackson
Administrator
United States Environmental Protection Agency
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Washington, D.C. 20460

The Honorable Judith Enck
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The Honorable Eric Holder
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The Honorable Ignacia Moreno
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April 26, 2012
USMR/Amax



Page 4
RCRA Notice Letter

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The Honorable Chris Christie
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